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WHEN IS A TORT MARITIME?

Rules for determining whether or not a contract is maritime are different from the rules fixing a tort as maritime or otherwise. A contract relating to a ship or commerce on navigable waters is subject to maritime jurisdiction, whether the contract is to be performed on land or water. (Benedict's Admiralty, 4th ed., sec. 145; Atlantic Transporting Co. v. Imbrovek, 234 U. S. 52.) So, a contract of employment in loading and unloading a ship is one of stevedoring, and therefore maritime, although the service thereunder is performed entirely on a pier. (Keator v. Rock Plaster Co., 182 App. Div. 153, 224 N. Y. 540.) It is the subject matter which determines whether or not a contract is maritime. (N. Y. Law Jour., Nov. 15, '22.)

But whether a tort is maritime depends not on whether the party was working under a maritime contract, but solely on the locality of the person injured at the time the wrong was committed, whether on land or navigable waters. If the wrong takes place on land, it is non-maritime; if it takes place on navigable waters, it is maritime. Even though the party is working under a maritime contract and the injury takes place on a pier, the case is not one for admiralty jurisdiction, but for the determination of the state courts. (Hoof v. Pacific American Fisheries, 284 Fed. 174.)

There is a different rule applying to seamen than to others. A seaman, injured while employed as such must resort to admiralty for recovery, where he is limited to maintenance, wages and cure, except when his injury is due to unseaworthiness, under American Merchant Marine Act, sec. 33. Though admiralty has jurisdiction of a tort action for personal injuries to one employed on a vessel, the rule of right applicable, unless he bears the relation of a seaman, as defined by U. S. Rev. St. sec. 4612, is the common law right of recovery. (Hoof v. Pacific American Fisheries, 284 Fed. 174, and cases cited in note on page 175.)

"Seaman" once meant a person "who can hand, reef, and steer"—a mariner in the full sense of the word. As conditions changed, and necessities of changes increased, "seaman" received an enlarged meaning. The cook and surgeon, and employees other than able seamen, were included. (Bean v. Stupard, 1 Doug. 11; Allen v. Hallet, 1 Fed. Cas. 472, No. 223.) In the J. S. Warden (D. C.), 175 Fed. 314, a bartender was ranked as a seaman. In the Baron Napier, 249 Fed. 125, 161 C. C. A. 178, a muleteer, performing the services of a watchman, was given the status of a seaman. In the Buena Ventura (D. C.), 243 Fed. 797, a wireless operator, employed by another, but placed on the articles at the nominal sum of 25 cents a month, was classed a seaman. Section 4612, R. S., provides that:

> "* * * Every person * * * who shall be employed or engaged to serve in any capacity on board the same (vessel) shall be deemed and taken to be a seaman. * * *"

In actions *ex contractu* the nature and subject matter of the contract form the test of determination, while in actions sounding in tort locality is the determining factor. Admiralty does not take cognizance of wrongs committeed on land. The question must be resolved according to the locality and character of the injured thing. So, where a vessel negligently collides with and damages a bridge which is maintained and used as an aid to commerce on land, the tort is not maritime. (Martin v. West, 222 U. S. 191, 32 Sup. Ct. 42, 56 L. Ed. 159.)

The locus of a tort is held to be determined by the place where the injury and damage arose, rather than where the negligent act which produced such injury was

committed. (Rundell v. La Campagnie Generale Transatlantique, 100 Fed. 655, 40 C. C. A. 625, 49 L. R. A. 94.) It is the locality of the person or thing injured, not that of the offending person or thing, that determines the question of jurisdiction. (John Spry Lbr. Co. v. The C. H. Green, 76 Mich. 320, 43 N. W. 576.)

A shore dock, bridge, abutment, protection piling and pier, are structures connected with the shore and land commerce, and an injury to such structure caused by a vessel negligently adrift, is not a maritime tort. (Cleveland, etc., R. Co. v. Cleveland Steamship Co., 208 U. S. 316.)

The fact, however, that a vessel is securely moored to a wharf and has communication with the shore by a gang-plank, does not make her a part of the land so as to deprive admiralty of jurisdiction of a tort committed on board. (Leather v. Blessing, 105 U. S. 629.)

The Judiciary Act declares the jurisdiction of the Federal courts over causes of admiralty and maritime jurisdiction to be exclusive, yet saves to suitors in all cases "the right of a common-law remedy, where the common law is competent to give it." The common law always offers a remedy in personam, and of such suits the admiralty and common-law courts have concurrent jurisdiction. (1 R. C. L. 408-409.)

THE DAY'S NEWS—AUTOMOBILE TRAGEDIES—CRIME—RADICALISM

In a recent issue of a St. Louis daily newspaper is published an account of a wealthy Philadelphia clubman, put under $35,000 bond after his limousine had run down a group of people alighting from a street car. He denied that he was in an accident. He was held on charges of homicide, driving when intoxicated, and leaving the scene of an accident. The police found him four blocks from the scene of the tragedy, standing beside his blood-bespattered car, on the fender of which was found a neckpiece worn by one of the women killed. A young man, 29 years old, a young lady, 18, and the young man's mother, 65, were killed. Assuming that the accused will be properly punished, his punishment will not stop this sort of thing. Tragedies of this kind will continue as long as the state permits imbeciles and the criminally inclined to drive automobiles. Punishment of the criminal will not bring back the dead nor restore the maimed to their former condition.

From the same issue of the paper mentioned, the following was clipped:

CHICAGO, March 5.—By I. N. S.)—Two unidentified persons, presumably man and wife, were killed early today by a taxicab following which a mob threatened to manhandle Nelson Cross, the chauffeur. The number of persons killed by automobiles in Chicago this year now stands at 100.

Again, from the same paper, same issue, an account of events taking place in St. Louis, as given by the St. Louis Star:

Five men were arrested in automobile accidents in which seven persons were injured and three machines wrecked within the last twenty-four hours.

A taxicab driven by Earl Montford, 3439 Lucas avenue, was wrecked at Jefferson and Clark avenues at 1:30 a. m. today, when it collided with the automobile of Joseph J. Streib, 4016 California avenue. Frederick F. Zolper, 2003 Madison street, and Joseph M. Blong, 2854 St. Vincent avenue, were injured. William Ryan, 3216 St. Vincent avenue, who was being taken home ill from the Union Station, escaped injury. Streib was arrested.

Dorothy Victor, 7 years old, 3705 Garfield avenue, hit by the car of Tony Spicuzza, 2516 Arlington avenue, in front of 1904 North Grand boulevard, when she broke away from her sister and ran in front of the machine at 2 p. m. yesterday, suffered hemorrhage of the brain and severe lacerations. Spicuzza was arrested.

G. C. Hampton, 4453 Wallace street, was arrested charged with carelessness after

his machine struck the automobile of William A. Federer, 3892 Connecticut street, at Grand boulevard and Connecticut street. Louis Rottermund, 3929 South Compton avenue, riding with Hampton, was badly cut.

A. J. Dulle, 3440 De Kalb street, avoided a collision at Fifteenth and O'Fallon streets, but wrecked his machine and was arrested when he crashed into the side wall of a store. He was cut and bruised.

James Smith, a negro, 2707 Lucas avenue, was arrested following a head-on collision between his automobile and a street car at Thirteenth and Carr streets. Smith was bruised and cut. The automobile was completely wrecked.

These are not unusual, but daily occurrences. Has it come home to you?

Then we turn the page and find where warrants were issued against three men, charging them with second degree burglary. They were arrested in an automobile. They carried weapons, and had a set of burglar's tools. Merely another sample of the same day's news.

It is a frequent occurrence to find editorials in our newspapers bewailing the failure of our government to take advantage of an excellent opportunity to become embroiled in the European mess. Better be thankful that we discovered Europe in time. And this has nothing to do with politics.

The next page of our paper contains much that is interesting. A minister of the gospel says that no legislative body has a right to legislate on matters religious. Probably no one with any understanding of our principles of government will dispute that statement. The reason we mention it is that some impious person has just suggested that the churches conform their rules to our laws.

Mention is also made of two sermons, preached on the same day, suggesting that religion should be taught in "our schools." Whose schools? Whose religion?

With the passing of time, we love more and more the pure religious teachings of the Master. His was the simplicity of greatness, the greatness of simplicity.

And so goes the daily news—automobile and other tragedies—crime—radicalism.

NOTES OF IMPORTANT DECISIONS

LARCENY POLICY INSURING "PERSONAL EFFECTS," ETC., AS COVERING FALSE TEETH.—A Larceny policy insuring against loss of "personal effects," including toilet articles, scientific apparatus and jewelry. is held in Rubin v. Globe & Rutgers Fire Ins. Co.. 196 N. Y. Supp. 657, not to cover a set of false teeth. Relative to this highly important question, the Court said:

"But the respondent and the trial justice construe the policy as including the said false teeth under the enumerated articles, either as a 'toilet article,' or 'scientific apparatus,' or as coming within the term 'jewelry.' I am of the opinion, however, that construing the words in their ordinary and accepted meaning, as must be done in the absence of anything to show that they were used in a different sense, the words 'toilet articles' cannot be construed to include false teeth, any more than a false ear could be deemed a toilet article.

"So, too, the words 'scientific apparatus,' in the ordinary meaning of these words, cannot be deemed to include false teeth, even though they might be deemed a product of scientific apparatus. Furthermore, the word 'jewelry' indicates gems or ornaments used for personal adornment, and, in the ordinary and usual meaning, the word cannot be construed as including false teeth, any more than false hair or a false eye could be deemed to be jewelry, even though they might improve the appearance of the person.

"Moreover, when a policy of insurance specifically enumerates the articles covered by the terms of the policy, the pleader cannot by mere conclusion extend the liability to the insurance company, and a demurrer or a motion in the nature of a demurrer, under well-settled rules of pleading, does not admit mere conclusions or unfounded inferences drawn from the specific facts and terms concededly contained in the policy."

NEWS AGENT ON TRAIN IS A PASSENGER.—A news agent riding on a train under contract between the railroad and his

employer which entitled the agent to ride on the train without payment of fare, is held in Nevill v. Gulf, C. & S. F. R. Co., Tex., 244 S. W. 980, to be a passenger, within the rule making void contracts attempting to exempt carriers from liability to passengers for injuries resulting in negligence. In part the Court said:

"Our Supreme Court has held that the relation of carrier and passenger exists in this state in every case in which the carrier receives and agrees to transport another not in its employ, whether by contract between them or between the carrier and some other person by whom the person to be transported is employed, and that it is immaterial how or by whom the carrier is compensated therefor, or whether compensated at all, and that contracts attempting to exempt such carrier from liability to such passenger for injuries resulting from its negligence or the negligence of its agents or employees are void. G. C. & S. F. Ry. Co. v. Wilson, 79 Tex. 371, 375, 15 S. W. 280, 11 L. R. A. 486, 23 Am. St. Rep. 345; G., C. & S. F. Ry. Co. v. McGown, 65 Tex. 640; Missouri Pacific Ry. Co. v. Ivy, 71 Tex. 409, 411-416, 9 S. W. 346, 1 A. L. R. 500, 10 Am. St. Rep. 758; M., K. & T. Ry. Co. of Texas v. Blalack, 105 Tex. 296, 147 S. W. 559.

"The holding of our Supreme Court set out above was followed and applied by the Court of Civil Appeals at Fort Worth in sustaining a judgment in favor of a newsboy in an action for damages for injuries received by him as a result of the negligence of the railway in the case of Texas & Pacific Ry. Co. v. Fenwick, 34 Tex. Civ. App. 222, 78 S. W. 548, in which case a writ of error was refused. It follows that the Court of Civil Appeals erred in affirming the judgment of the trial court on the ground stated in the opinion of that court."

"COLLISION" IN AUTOMOBILE POLICY HELD TO COVER UNUSUAL CONTACT WITH ROADWAY.—In the case of Young v. New Jersey Ins. Co., 284 Fed. 492, there was an agreed statement of facts, as follows:

"It is hereby agreed by and between the parties to the above-entitled action that the accident occurred in the following manner, to-wit: That while plaintiff was driving the said automobile upon the public highway at the rate of approximately 30 miles per hour, and was crossing a coulee, the front axle of the car broke, and thereupon the broken axle and frame of the car was let down to the earth, and plowed into the earth with great force and violence; that the force and resistance with which the automobile thus met was sufficient to cause the same to pivot and overturn, and that the damage resulted therefrom; that the said damage was caused by the resistance and impact with which the end of the broken axle and the front end of the car met when it thus came in contact with the earth after the breaking of the axle, and that it would not have thus come in contact with the earth if the axle had not broken. It is further agreed between the parties that immediately and for some time preceding the breaking of the axle the same was defective, and was cracked so as to substantially weaken the same; that this defect was unknown to the plaintiff and could not be detected by ordinary, careful observation. It is further agreed that, if the damage caused as specified above is within the risks covered by the policy, the plaintiff shall have and recover the sum of $3,900, with interest thereon from the 19th day of March, 1922, at the rate of 8 per cent per annum. All other defenses on the part of the defendant are abandoned."

Holding that the damage was covered by the policy, the Court said:

"From the 'agreed statement' it appears that, the auto moving rapidly over the road, the front axle broke, it and the frame dropped to the road, and the energy of forward motion, resisted, caused the axle and frame to penetrate the road surface, and the auto to pivot and overturn, coming into violent contact with the earth, resulting in damage to the auto as aforesaid. The only issue is whether this occurrence was a 'collision,' within the meaning of the 'collision clause.'

"When this policy issued, the definition of 'colision,' in auto insurance, was in process of development and extension beyond that popular or ordinary, and to include some, if not any, unusual contact between auto and road or earth. There was some conflict in court decisions, but in the courts of defendant's domicile in some others the law was fairly settled that an occurrence like or analogous to this at bar was a 'collision,' within the meaning of the word in auto insurance. See Harris v. American Casualty Co., 83 N. J. Law, 641, 85 Atl. 194, 44 L. R. A. (N. S.) 70, Ann. Cas. 1914B, 846; Universal Service Co. v. American Ins. Co., 213 Mich. 523, 181 N. W. 1007, 14 A. L. R. 183. All decisions relating to the subject, extant when this policy issued, are reported or referred to in Bell v. American Ins Co, 173 Wis. 533, 181 N. W. 733, 14 A. L. R. 179; Universal

Service Co. v. American Ins. Co., 213 Mich. 523, 181 N. W. 1007, 14 A. L. R. 183; Traynor v. Automobile Mut. Ins. Co., 105 Neb. 677, 181 N. W. 566, 14 A. L. R. 195; Rydstrom v. Queen Ins. Co., 137 Md. 349, 112 Atl. 586, 14 A. L. R. 212. See also Moblad v. Western Idemnity Co. (Cal. App.) 200 Pac. 750.

"In these cases the meaning of the word 'collision' is extensively set out, and so needs no repetition here. Because of this development and extension of the word's meaning, some insurance companies in policies insert express exclusions of contracts with roadbed or way, ditch, or gutter, railroad ties or rails, or those contacts with the earth or other object primarily due to upsets or overturns. None of these exclusions are in this policy, but there is a limited one of 'loss or damage to any tire due to puncture, cut, gash, blowout, or other ordinary tire trouble,' due to 'being in accidental collision with any other automobile, vehicle or object'; that is, from the possible or probable meaning of 'collision' defendant expressly excluded tire damage from contact with glass, tacks or stones, and other hard objects on the surface or imbedded and a part of road or earth, or from contact with ruts, depressions or other surface irregularities.

"This must have been done, lest otherwise these common incidents of an auto's ordinary progress be held to be within the meaning of 'collision,' as used in this policy, and it is indicative that unexcluded contacts with road or earth, causing other than tire damage, were by the parties deemed to be within the meaning of the 'collision clause' aforesaid. In view of the premises and the rules of interpretation applicable thereto, it is believed that the damage to plaintiff's auto was caused by a collision within the intent of the policy in suit."

CORPORATIONS DOING BUSINESS WITHIN THE STATE.—The New York Law Journal for January 24, 1923, contains the following:

"In the case of Rosenberg Bros. & Co., Inc., v. Curtis Brown Company, which appears on the first page of this morning's Law Journal, the United States Supreme Court held that the coming into this state by officers of a corporation at various intervals for the purpose of purchasing merchandise for the corporation is not the doing of business within this state.

"This is in accord with the rule previously enunciated by the United States Supreme Court in Cooper Mfg. Co. v. Ferguson (113 U. S., 727) that the performance of a single or isolated transaction within the state is not the doing of business within the state.

"The decisions upon this subject divide so closely that it is very difficult to lay down a rule that will serve to define what the doing of business within a state is (see editorial, New York Law Journal, August 30, 1922).

"The Supreme Court itself has said that the results must depend largely upon the facts of each individual case (People's Tobacco Co. v. Am. Tobacco Co., 246 U. S. 79). It has been held that the maintenance of an office and of agents within the state for the purpose of soliciting business does not constitute the doing of business within the state by a corporation (Green v. Chicago B. & Q. R. R., 205 U. S. 530). However, when the corporation went one step further and the agents were authorized to make collections and to receive payments within the state it was held that the foreign corporation was then doing business within the state (International Harvester v. Kentucky, 234 U. S. 579).

"These cases are sufficient to illustrate that the Supreme Court was correct in pointing out that each case must for the most part stand alone. The case under discussion is in accord with the previous decisions, in that no regular course of business was conducted within this state, and all the cases have held that this, at the very least, is necessary before the corporation is doing business within this state.

WORKMAN INSTALLING ELECTRIC TRANSFORMER ENGAGED IN INTERSTATE COMMERCE.—A workman was injured while installing a new rotary converter and transformer in an electric substation, and connecting it with wires to the main or conductor bus that carries the electric current to an electric railway's trolley wires. The new transformer was to take the place of an old one, which regulated the current used in the operation of the railway company's cars in interstate commerce, and was an instrumentality essential to the successful operation of the railway. Held, that the work was one of repair and maintenance, and that the workman so engaged was employed in interstate commerce, within the meaning of the federal Employers' Liability Act. Halley v. Ohio Valley Electric R. Co., W. Va., 114 S. E. 572.

Distinguishing this from certain other cases, the Court said:

"We think the present case can be distinguished from the cases of McKee v. Ohio Valley Elec. Co., 78 W. Va, 131, 88 S. E. 616,

Roberts v. United Fuel Gas Co., 84 W. Va., 368, 99 S. E. 549, and Shanks v. Delaware, L. & W. R. Co., 239 U. S. 556, 36 Sup Ct. 188, 60 L. Ed. 436, L. R. A. 1916C, 797. In the McKee case the workman was killed by a fall of earth while working in an excavation under a wooden trestle on which the railway's track crossed a small stream, and near the supporting timbers thereof, intended for an abutment of a steel bridge to take the place of the trestle and to be used in lieu thereof, when completed; but he was not repairing or altering the trestle nor working on it, or on the track,, or anything else actually used in the operation of the railroad. In the Roberts case the plaintiff was injured while employed by defendant in digging a ditch for a pipe line which was to be used in interstate commerce. Judge Williams in the course of his opinion says:

" 'The work of excavating the ditch was purely construction work within the state, and was clearly separable and distinguishable from defendant's commercial business. The pipe line to be laid in the ditch was not part of defendant's means or appliance for carrying on either intrastate or interstate commerce, nor could it become such until the pipe was laid. This is altogether unlike a case where an employee is injured while engaged in repairing an existing means or appliance already devoted to a commercial purpose, as, for instance, the work of repairing an existing railroad track, bridge or depot, which is already devoted to commerce.'

"In neither of these two cases cited by counsel for defendant was the workman engaged in doing any work of repair upon an instrumentality that had been in actual use in interstate commerce. But it is otherwise in the instant case The old transformers and the main bus had been in actual use in interstate commerce for years. The old transformers were being replaced, if the orders to Powers were being followed, and he says they were. The new transformer was being connected up to serve in lieu of the old one. Clearly this is a work of repair."

A Memphis lawyer entered his condemned client's cell: "Well," he said; "good news at last."

"A reprieve?" exclaimed the prisoner eagerly.

"No, but your uncle has died leaving you $5,000, and you can go to your fate with the satisfying feeling that the noble efforts of your lawyer in your behalf will not go unrewarded." —Chicago Ledger.

VALIDITY OF AGREEMENT BY ADMINISTRATOR OR GUARDIAN TO SELL REALTY

By Dewey A. Dye, Bradentown, Fla.

A situation of some interest which is not confronted every day in the practice of law arises when a guardian or administrator makes an agreement to sell real estate, before the person acting in this representative capacity has authority granted by an appropriate Court of competent jurisdiction to make such sale. It is the general rule that a guardian or executor does not merely by virtue of the office have any charge or control of the real estate, and it is in the light of this rule that this situation is gone into.

The general rule with reference to most contracts by persons acting in a representative capacity is, that the representative whether a guardian or administrator or a trustee can make no contract binding, on the estate which they represent, but the contract creates a personal liability and the seller, purchaser or contractor must look to the representative for satisfaction or performance, and the representative must in turn look to the estate represented for compensation.[1]

Applying this general rule which is established by practically all authorities the question arises can such a contract when made with reference to the sale of real property be specifically enforced, or give use to an action for damages when the person acting in this capacity is without authority, to enter into such agreement and if not what the rights of the respective parties are in relation thereto.

It has been held with reference to guardians and administrators that there is no power in the person acting in this representative capacity to contract for the sale of real estate before authority to do so

(1) Sanford v. Howard, 29 Ala. 684, also 55 Ala. 493; 21 Cyc. 115; Andres v. Blazzard (Utah), 54 L. R. A. 354, holds cannot bind estate unless expressly authorized by law; 2 Florida 360 at 365 holds children cannot claim benefit of guardians contract, they are not parties to it, hence it must follow they cannot be bound thereby; with reference to Administrators power to bind estate, see 19 Florida 714.

has been granted.[2] Such a contract not only is not binding on the estate, but is void, as it is at war with the interest of the estate represented and thus is opposed to public policy. This is the rule in jurisdictions which have passed upon this question.[3]

As has been shown, it is a general rule that any contract made by such representative creates a personal liability, but it is the opinion of the writer that in such a situation as mentioned in this article, no personal liability arises, for the reason that the power and authority of a guardian, administrator or similar fiduciary is limited as a matter of law. All persons are presumed to know the law, and are charged to the same extent as though they did, hence the reason for holding the representative personally liable in such a case does not exist.

It is taken to be axiomatic that when the reason for a rule ceases to exist or has no application the rule ceases to exist or is not called into operation; hence by analogy, reasoning from the line of authorities which hold that an agent is not personally liable on his contract made for a principal without authority if the person contracted with knows the principal has not granted such authority to his agent,[4] should be applied to this situation, and the purchaser trading with a guardian or administrator is trading with a person whose authority is limited, as a matter of law, the extent of which he is bound to know,[5] hence he cannot look to the representative for redress. It has been so held in at least one well-considered case.[6]

The gravamen of the offense which allows a person to recover from an agent who acts without authority is founded in deceit and if the person contracting with has not as a matter of fact, or as a matter of law been deceived, he cannot recover for his loss which, while unfortunate, may be said to be damnum absque injuria.[7]

With reference to the personal liability of the representative, it may be stated as a general rule that the fiduciary would not be personally liable upon a naked contract for the sale of land belonging to the estate represented, made without authority, still an exception may be said to exist when there are apt words in the contract which create a personal liability in the nature of a warranty or covenant.

(2) Ibid, note 1.

(3) 23 Corpus Juris, page 154; 15 Am. and Eng. Cyc., 58; see also 67 L. R. A. 977 and 52 Southern 902.

(4) Principal and Agent, 21 R. C. L. 93, 38 Ann. Cas. 772 and note; Tedder v. Riggin, 65 Florida 153; 61 So. 244.

(5) Hedgecock v. Tate, 168 N. C. 660—85SE34.

(6) Ibid, note 5.

(7) Ibid, 4-5-6.

DISCLOSURE IN INSURANCE CONTRACTS

By Donald MacKay, Glasgow, Scotland

There have been several cases lately which indicate a disposition on the part of our judges to apply more strictly than heretofore the rule of the common law that the validity of the contract of insurance implies the utmost good faith on the part of the insured and as a corollary to this that he has made the fullest disclosure of all facts and circumstances affecting the risk. As our readers will know insurance companies were and are generous in the matter of interpreting contracts, not insisting on technicalities, or obscure conditions that may have escaped the notice of their clients and being generally easy as to settlement of claims. This laxity appears to have communicated itself to the courts, but now owing possibly to the knowledge that such generosity of construction was being abused, there is a reaction in favor of the stricter application of the law and in particular of the rule as to disclosure. We have already noticed one or two recent instances of this, and the judgment in the case of the Spathari which has been issued after a prolonged trial in the Scottish courts is the occasion of our writing on the subject again.

Now in marine insurance—to which branch of law the case specially relates—the law as to disclosure is codified in the

Marine Insurance Act of 1906, and as the statements in that measure are in general principle applicable to all forms of insurance we cannot do better than quote the relative sections.

"Section 17. A contract of Marine Insurance is a contract based upon the utmost good faith and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

"Section 18. (1) Subject to the provisions of this section the assured must disclose to the insurer before the contract is concluded every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which in the ordinary course of business ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

"(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

"(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

"(a) Any circumstance which diminishes the risk.

"(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of his business as such ought to know.

"(c) Any circumstances to which information is waived by the insurer.

"(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

"Section 19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer.

"(a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by or to have been communicated to him, and

"(b) Every material circumstance which the assured is bound to disclose unless it come to his knowledge too late to communicate it to the agent."

The case of the Spathari was an action against underwriters by the owners of that vessel and her cargo for recovery of insurance money consequent upon the sinking of the vessel. The defense was failure to disclose material facts and circumstances which entitled the insurers to avoid the contract in terms of the statute above quoted.

It was urged in argument on behalf of the plaintiffs that as the Marine Insurance Act of 1906 was a codifying statute, decisions anterior to its date purporting to expound and apply the common law might still be referred to as authoritative. That contention was accepted subject to this qualification, that cases anterior to the statute might still be referred to in so far as they could be construed as interpreting and applying the rules set forth in the statute, but a decision which could not be construed in a manner reconciliable with a reasonable interpretation of the words of the statute had no longer any authority. The case of Haywood v. Rogers (4 East 590) was held to fall under the latter category, for as the trial judge put it, "I have difficulty in seeing how consistently with the principle of 'the utmost good faith' it could even be held to be superfluous to disclose to the insurer a fact which if known would influence the judgment of a prudent insurer in fixing the premium."

Another authority relied on by the claimants was Joel v. Law Union & Crown Insurance Co., 1908 2 K. B. 431—a case subsequent to the statute—in which it was

explained that a policy is not vitiated by the non-disclosure of a circumstance which though material, is not one which the person insuring might reasonably be supposed to deem to be material. That doctrine, however, was held only applicable to special cases of which the following was cited as typical. If, for instance, a potato merchant in an agricultural district without the intervention of any agent familiar with insurance and shipping, insured against perils of the sea and consignment of potatoes to a foreign port, and thereafter the underwriter contended that the policy was voidable by reason of the non-disclosure of a certain special circumstance known only to the merchant, the latter could competently answer, "Be it that this circumstance was at the time for special reasons a material one, that was not a thing which I knew or which in the course of my ordinary business I could presumably be expected to know ought to be disclosed."

Now in the case of the Spathari, the facts, the non-disclosure of which was relied on as material for avoidance of the contract, were as follows: The vessel having been brought by a Greek in Glasgow acting in the interests of a Greek syndicate in the Levant, was by arrangement transferred directly to the plaintiff, a British subject whose interest therein was intended to be of a limited and temporary character. After her arrival in Eastern waters the right of property in her was to be transferred to the Greek who originally purchased her and she was to pass into the control of a syndicate or group of local Greek gentlemen who were to endeavor to form a company registered under British law to take her over. Meantime the Greek gentleman in Glasgow was to be manager of the vessel, he was interested in the cargo and he was to pay the disbursements of the voyage and to be entitled to the freight.

At the time of these transactions (1920-21) it was very difficult to insure Greek ships. The reason of this was that at a time when there was a great slump in ships prices an extraordinary number of insured Greek ships had sunk in a mysterious way. The result of these sinkings was that rightly or wrongly underwriters were of opinion that a peculiar risk attached to the insurance of Greek ships, namely, the risk that the ship would be scuttled by the Greek owner.

"The question for me," concluded the learned judge, after fully reviewing the evidence, "is whether (these circumstances) were material from the point of view of an underwriter. In my view of the weight and import of the evidence, the vessel, if these facts had been disclosed, was at that time uninsurable in the ordinary market and on the ordinary terms. Accordingly I am constrained to hold that those facts were material. I must further hold that they were facts the materiality of which persons engaged in shipping or insurance business knew or ought to have known to be material. They were not disclosed. Accordingly in view of the terms of the statute, I must hold that the policy is voidable and that the plaintiff cannot recover under it."

A colored couple stood before the probation officer for the second time.

"Now this," the officer said to both, "seems to me to be a case where there is nothing very much the matter, except that your tastes are different. You, Sam, are much older than your wife. It is a case of May married to December."

A slight pause, and then Eva, the wife, was heard to remark in a tired voice:

"I—I really doan't know what you means by yer saying May is married to December. If yer goin' to talk that way it seems to be a case of Labor Day married to de Day of Rest."—Pittsburgh Chronicle-Telegraph.

Smith is a young lawyer, clever in many respects, but very forgetful. He had been sent to a distant city to interview an important client, when the head of his firm received this telegram: "Have forgotten name of client. Please wire at once."

The reply he received was a masterpiece of sarcasm, irony or something. It ran: "Client's name Jenkins. Your name Smith."—Boston Transcript.

CARRIERS—EVICTION OF PASSENGER

ST. LOUIS-SAN FRANCISCO RY. CO. v. SMITH

244 S. W. 741

Supreme Court of Arkansas (Nov. 13, 1922)

Under Crawford & Moses' Dig. § 879, authorizing railroads to charge one-half fare for children between 5 and 12, and Section 881, authorizing the eviction of any person from trains who refuses to pay fare or toll, a railroad could evict from its train both a father who had paid his fare and his minor child, more than 5 years of age, under his custody and control, but whose fare he refuses to pay.

King, Mahaffey & Wheeler, of Texarkana, Tex., for appellant.

A. D. Du Laney and John J. Du Laney, both of Ashdown, for appellee.

WOOD, J. The appellee instituted this action against the appellant to recover damages for an alleged unlawful eviction and for maltreatment. Appellee alleged that on the 28th day of May, 1921, he was a passenger on appellant's road from its station at Ashdown, Ark., to Orton, Ark.; that while on the train as such passenger the auditor cursed, abused and maltreated him, and used in his presence violent, profane and insulting language, and forcibly evicted him from the train at Red Bluff station three miles west of his destination; that said eviction and abusive and insulting language was unlawfully and willfully done; that he suffered shame and humiliation from the cursing, which occurred in the presence of other passengers on the train and in the presence of his young son, who was with him at the time, all to his damage in the sum of $500, for which he asked judgment.

In its answer, the appellant denied specifically the allegations of the complaint. The testimony on behalf of the appellee was substantially as follows: He was a passenger on appellant's train between Ashdown and Orton, Ark., on May 28, 1921. He got on the train with his little boy, and gave the auditor his ticket. He had a sack of flour with him, and after he gave his ticket to the auditor the auditor asked him what he was going to do with the sack of flour and why he did not give it to the baggageman. Appellee then detailed the conversation as follows:

"He told me, 'By God, the Frisco wasn't running a charity train; there had been too much of that done on the Frisco line, parents running their children through and not paying anything; they all claim they are under 5 years old; you might have told the truth about the kid being 6 years old'—I mean 7 years old. I says, 'I ought to know the kid's age.' He says, 'That don't make any difference; by God, you have got to pay for him'; and I gave him a dime. He says, 'I am going to put you off; that ain't enough to pay the kid's fare to Orton or Red Bluff, or not even to Long.' I says, 'This is all I have got'; and John Machen and Ben Wright was sitting across the aisle from me. I asked John did he have any money that I could pay my kid's fare as far as Red Bluff anyhow. He said no, he didn't have nothing only train fare himself, and Ben Wright told me he had a dime he would loan me, and when he loaned me the dime the auditor came back and says, 'By God, have you dug that money up yet?' I says, 'I have got part of it; what do I have to pay for the kid's fare to Orton?' He says, 'Twenty-four cents.' He says, 'What have you got?' I says, 'Another dime.' I handed it to him, and he says, 'I will let you and the kid go on to Red Bluff, and if you can't dig up the rest of the fare you will sure as hell get off at Red Bluff.' And about the time we got to Red Bluff the brakie hollered, 'Red Bluff,' and he came to the door, too, and started in and asked me—so he came on the door then; I was in the smoker—he came to the door and told me he was going to put the kid off. I says, 'If you put the kid off I am going to get off with him; if you put the kid off I will have to get off, too.' I told him to give me part of my money back, 'I ought to have a little coming if you ain't going to carry me on to Orton.' He says, 'Give you hell if you look like you wanted it.' He says, 'You can ride on to Red Bluff or get off.' John Machen took hold the kid and says, 'Come on, son; your papa is liable to have a fight with the auditor.' I had some stuff in a sack and a sack of flour, and I picked up my stuff and got off, and I had to walk then in home about three miles."

The appellee further testified that the language used to him by the auditor was humiliating; that he was crippled in one of his legs; was in poor health; had been sick, and came very near getting too hot walking from Red Bluff to his home at Orton, a distance of about three miles. Beside the sack of flour he had lard and a bucket of molasses in a sack and also a pair of overalls.

A witness on behalf of the appellant testified that he was the auditor on the train on the occasion testified to by the appellee. Witness remembered that the man got on the train at Ashdown and had a ticket for himself. He did not have any ticket for his child.

Witness told the man to borrow the money from some of his friends on the train. Some one loaned the man some money. Witness did not remember how much. He collected the fare, and cut the passengers a cash fare receipt and let them ride to their destination. He did not tell the appellee that he would have to get off at Red Bluff, and did not curse him or use any profane and abusive language toward him. On cross-examination he stated that he did not remember whether he told appellee that he would have to get off. Witness presumed that if he collected the man's fare and the child's fare they would get off at their destination. He denied telling the appellee that he would give him hell if he wanted his money back, and stated that he did not talk in a loud tone of voice. He did not remember taking up Smith's ticket from Ashdown to Orton, and did not remember appellee having a sack of flour with him; could not say whether he gave a cash fare slip to Smith or any one else.

Testimony of other witnesses who were on the train at the time corroborated the testimony of the auditor to the effect that he did not curse the appellee or use any profane or abusive language in his presence.

The appellee testified in rebuttal that the auditor gave him a cash fare slip for his boy from Ashdown to Red Bluff, and the auditor also gave him back two cents.

The Court instructed the jury at the request of the appellee as follows:

"No. 1. You are instructed that if you find that P. A. Smith purchased a ticket from the defendant, and boarded its train at Ashdown, Ark., and gave said ticket to the defendant's auditor for transportation from Ashdown to Orton, then the relation of carrier and passenger existed, and it was the duty of the defendant to transport the plaintiff to Orton on its train; and if you further find from a preponderance of the evidence that the defendant's auditor ejected the plaintiff from its train at Red Bluff, and used insulting language toward him, then you should find for the plaintiff in damages such sum as will reasonably compensate him for such ejection, inconvenience, insults and humiliation as he suffered therefrom, if any you may find, not to exceed the amount sued for."

At the request of the appellant the Court instructed the jury as follows:

"No. 1. The Court instructs you that if you find from the evidence that defendant's servant did not curse and abuse plaintiff, and the plaintiff voluntarily left the train at Red Bluff, then the defendant would not be liable to the plaintiff, and you will return a verdict in its favor."

The appellant objected generally to the instruction given at the request of the appellee and also specifically as follows:

"Because it authorizes the jury in the event they should find for the plaintiff to recover damages for mental anguish. * * * There is no physical ejection at all. If there is any ejection at all, it is constructive purely. * * * Mental anguish is not recoverable for merely constructive ejection."

The appellant, in its motion for a new trial, assigned as error the giving of appellee's instruction No. 1, and also the general assignments that the verdict was against the evidence and against both the law and the evidence.

[1, 2] 1. The appellee alleged that he was forcibly evicted from the train, and also that the eviction was unlawfully and willfully done. Appellant denied that the auditor of its train forcibly evicted appellee, and denied that such alleged eviction was unlawfully and willfully done. Thus the pleadings raised the issue as to whether or not the appellee was forcibly, unlawfully, and willfully evicted from the appellant's train. In Hall v. Waters, 118 Ark. 427, 432, 176 S. W. 699, 701, we said:

"Each and all of the material allegations of appellant's complaint were specifically denied by the allegations of appellee's answer. The denials were as specific as the allegations. This placed the burden upon the appellant to prove the allegations of his complaint."

So here the answer of the appellant challenged the allegations of the appellee's complaint, and placed the burden upon the appellee to prove that there was an unlawful eviction. Such proof was essential to appellee's cause of action for an eviction. The proof was directed to the issue as to whether or not there was an unlawful eviction, and the appellee's instruction as well as the instruction for the appellant presented the issue as to whether or not the appellee was ejected from the appellant's train, or whether he voluntarily left the same.

The undisputed testimony shows that the appellee's son was over 5 years of age; that the auditor demanded the fare for this child, the appellee did not pay the same, and the auditor informed the appellee that he would have to pay the fare for the child or he would put him off at Red Bluff. When they reached Red Bluff the appellee still had not paid the fare of his son to Orton. Appellee had only paid 20 cents to Red Bluff, and the fare to Orton was 24 cents. At Red Bluff appellee and

appellant's auditor were in a controversy concerning the fare. Appellee wanted the auditor to pay him part of the money back, which the auditor refused to do. John Machen, one of the passengers who was getting off at Red Bluff, took hold of the appellee's boy and said, "Come on," whereupon the appellee, according to his own testimony, picked up his stuff and got off the train. The auditor did not take hold of the appellee.

It thus appears from the undisputed testimony that the appellee got off the train at Red Bluff because the auditor had refused to carry the appellee's child to Orton, unless his fare was paid, which was not done. The question, therefore, is whether or not under the above undisputed facts the appellant had the right to require the appellee to leave his train because he had not paid his son's fare from Red Bluff to Orton.

[3] Section 879, C. & M. Digest, authorizes railroads to charge one-half fare for children between the ages of 5 and 12 years, and Section 881 authorizes the eviction of any person from railway trains, who refuses to pay fare or toll, the eviction to take place at any usual stopping place the conductor may select. The father, having the custody and control of his minor child when he took same upon the train with him as a passenger, was under the duty to pay his fare. Such was his duty as the natural guardian and protector of his child, and upon his failure to do so the appellant had the right to eject both father and child from its train. Railway v. Hoeflich, 62 Md. 300, 50 Am. Rep. 223, and other cases cited in note, 10 C. J. § 1172, p. 733.

It follows from the undisputed evidence that no cause of action in favor of the appellee against the appellant could be predicated upon an unlawful eviction, for there was none. The appellee contends that the question of whether or not he could recover if he refused to pay the fare of his minor son from Red Bluff to Orton was not an issue in the court below, and was not presented either to the court or jury. But we do not agree with the appellee in this contention. It was necessarily raised, and was developed in the testimony on the issue as to whether or not there was an unlawful eviction of the appellee. It was incumbent on the appellee to prove that there was an unlawful eviction before he established his cause of action. One of the grounds of the motion for a new trial is that the evidence was insufficient to sustain the verdict.

The judgment is therefore reversed, and the cause is dismissed.

NOTE—*Right of Carrier to Evict Passenger for Failure to Pay Child's Fare.*—It is now very well settled that the failure of a passenger to pay the fare of a child under his care and control will authorize the expulsion of both, and this is true, although both are minors. 5 R. C. L. 118.

If a custodian refuses to pay the fare of a child who is subject to payment of fare, both may be ejected, although the custodian tenders his own fare. 1 A. L. R. 1452; Philadelphia, W. & B. R. Co. v. Hoeflich, 62 Md., 300, 50 Am. Rep. 223, 8 Am. Neg. Cas. 348; Braun v. Northern P. R. Co., 79 Minn. 404, 82 N. W. 675, 984, 49 L. R. A. 319; Warfield v. Louisville & N. R. Co., 104 Tenn. 74, 55 S. W. 304; Fleck v. Missouri, K. & T. R. Co., Tex. Civ. App.. 191 S. W. 386.

The ejection of a child of tender years amounts to an ejection of the parent or other custodian. 1 A. L. R. 1453; Gibson v. East Tennessee, V. & G. R. Co., 30 Fed. 904; Braun v. Northern P. R. Co, 79 Minn. 404, 82 N. W. 675, 984, 49 L. R. A. 319, 79 Am. St. Rep. 497.

If the parent's fare has been paid, the unearned portion must be returned or tendered as a condition to the right to eject the parent. 1 A. L. R. 1454; Lankford v. Southern R. Co., 165 N. C. 653, 81 S. E. 998, 6 N. C. C. A. 1060; Lake Shore & M. S. R. Co. v. Orndorff, 55 Ohio St. 589, 45 N. E. 447, 38 L. R. A. 140, 60 Am. St. Rep. 716.

In a note in 1 A. L. R. 1452, it is said that a child who is permitted by the conductor to travel free of charge, or for whom no fare is demanded, is entitled to the rights of a passenger. Citing among other cases the following: Ball v. Mobile L. & P. Co., 146 Ala. 309, 39 So. 584, 119 Am. St. Rep. 32, 9 Ann. Cas. 962; Southern R. Co. v. Lee, 30 Ky. L. Rep. 1360, 101 S. W. 307, 10 L. R. A. (U. S.), 837; Littlejohn, v. Pittsburg R. Co., 148 Mass. 478, 20 N. E. 103, 2 L. R. A. 502; Rawlings v. Wabash R. Co., 97 Mo. App. 515, 71 S. W. 534; St. Louis & S. F. R. Co. v. Fitts, 40 Okla. 685, 140. Pac. 144, L. R A. 1916C 348.

ITEMS OF PROFESSIONAL INTEREST

The folowing was actually filed in the case entitled as shown:

IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLA.

W. G. TUBBS, Plaintiff,
v.
M. S. LANIER, Defendant.

PLEAS

Now comes the defendant, by his attorney, M. S. Lanier, and for his first plea says:

That to the best of his knowledge and belief the plaintiff is non compos mentis and the suit for this reason should be dismissed or continued until a lunacy commission can inquire into the sanity of the said plaintiff.

And for his second plea the defendant says

that there are two M. S. Laniers residing in the said County of Dade and said City of Miami, Florida, one Marvin S. Lanier and the other Marion S. Lanier, and the said plaintiff's declaration is ambiguous, vague, indefinite, and that the defendant is not the M. S. Lanier covered by the said declaration and the suit should be dismissed for this plea.

And for a third plea, the defendant says that the said plaintiff is not a bona fide purchaser for value and without notice, but that the said Tubbs took the said notes under a color of innocent purchaser and never paid anything for the said notes and that the said Tubbs is really an agent for the said endorser.

And for a fourth plea, the defendant says that the contract of purchase contained a clause which automatically cancelled the said notes contemporaneous with the reduction in price of the automobile purporting to be covered by the said notes and that the same were null, void and of no effect.

And for a fifth plea the defendant says this court is without jurisdiction; that the said contract was not made in Dade County, but upon the high seas and that the said plaintiff is not a resident of Dade County and that the said defendant is not a resident of Dade County and for this reason the suit should be dismissed.

And for a sixth plea the defendant says that the whole proceedings is irregular, unlawful and contrary to the precedents, usages and customs of the courts, in that the attorney, D. J. Heffernan, who filed the demurrer to the declaration is not and never was the attorney for the said defendant, but that one L. L. Stapp was retained to defend the said case and that the said Stapp has received moneys and papers from the said defendant and the attached praecipe of withdrawal from the said case of the said Heffernan constitutes the first knowledge that the said defendant has or has had that the said Heffernan purported to represent the said defendant.

And for a seventh plea, the defendant says that he paid the said notes and settled the case with Morrow and Morrow, attorneys for the said Tubbs, and that the said notes never were turned over to the said defendant nor to his attorney, L. L. Stapp, at the time the said Stapp advised and arranged the said settlement.

In witness whereof, the said defendant has set his hand and seal this fourth day of January, 1923.

M. S. LANIER.

Mobile, Ala., January 8, 1923.

To the Editor of the Central Law Journal:

If Article Five (5) of the Constitution of the United States can legally be construed so as to make the word "necessary" to mean that any change in the fundamental law of the Constitution, may be made, which experience shows to be "necessary" for the better execution of the popular will, what is to prevent hereafter an amendment to the Constitution to be sustained, whenever ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, declaring the creed of some one of the Protestant Churches, for instance that of the Baptist Church, that of the Methodist Church or that of the Presbyterian Church to be the law of the land, and commanding every citizen of the United States to become a member of that particular church?

If the better execution of "the popular will," without any limitation as to what that "popular will" is, is the meaning of the word "necessary" in Article Five (5) of the Constitution of the United States, then anyone can see that this country has entered upon a course of Constitutional Legislation, which will end in a State religion.

There is no middle road between State religion and Freedom of Religion, if it is possible to amend the Constitution of the United States for better execution of whatever may be popular will upon any subject. That is what the Eighteenth Amendment to the Constitution means. Today the popular will, perhaps, demands the absolute exclusion of alcohol; tomorrow it may demand absolute exclusion of all Roman Catholics from the United States.

FREDERICK G. BROMBERG.

LEGAL RELATIVITY OF THE CARDINAL SINS

Lord Ellenborough once described "Suicide" as one of the seven deadly sins equally hateful to God and man; we have heard this remark quoted from time to time by coroners when directing juries in cases of *felo de se*. The statement, however, seems to be inaccurate. The seven deadly sins recognized as such by the Medieval Church were Murder, Witchcraft, Heresy, Adultery, Gluttony, Drunkenness, and Blasphemy. A "cardinal" or deadly sin differed from "venial sins" in that the offender who died without having purged his offence and obtained absolution went straight to hell; he was denied the opportunity of purgation and reform permitted to lesser sinners in the "In-

termediate State." The presence of Gluttony and Drunkenness in this list seems strange to modern folk, who regard these offences as less important. But the relative estimate, alike of crimes in secular jurisprudence and sins in sacred jurisprudence, differs much from age to age and clime to clime. In his recently published work on "Barbary," Mr. MacCallum Scott reports an interview with a very sacred Moslem prophet, saint, and priest, in which the latter told him that idolatry, opium-smoking and wine-drinking were the three deadly sins which Allah never forgave. "But what of murder and adultery?" asked his interviewer. "Oh, Allah is merciful and will not destroy the soul for little sins like these," replied the holy man. Relativity, evidently, is the order of the day when the estimation of moral criminality is in question among the races of mortal men.—Solicitors' Jurnal, Dec. 30, 1922.

THE BUSINESS LAW JOURNAL.

We are in receipt of a copy of the first issue of The Business Law Journal, a magazine intended for the use of business men, manufacturers, bankers, accountants, credit men, etc. In our opinion, the publishers could well add lawyers to their list of prospective subscribers.

The publishers state that it will be published regularly each month hereafter—the first issue being for February,—and that in each issue will be given in digest form or at length, the current decisions of the state and federal courts, affecting business.

The following few subjects taken from the many treated in the February issue, will give some idea of the scope and up-to-dateness of the magazine:

Avoiding Litigation;
Stockholder Loses Subscription Rights;
Liability of Stockholders for Corporate Debts;
The Federal Trade Commission and Its Work;
Trade Associations and the Anti-Trust Laws;
The Open Competition Plan Illegal;
Protection of Trade Secrets by Injunction;
Current Business Decisions;
Decision of the Federal Trade Commission.

The editor is well-known to many members of the legal profession. He is Mr. John Edson Brady, who, since 1910, has been editor of the Banking Law Journal. The Business Law Journal is published at 71 Murray Street, New York City.

If the first issue is a reliable indication, we predict a successful future for the new Journal.

BOOK REVIEW

A SELECTION OF CASES UNDER THE INTERSTATE COMMERCE ACT

There has been received from the Harvard University Press the second edition of "A Selection of Cases Under the Interstate Commerce Act," by Prof. Felix Frankfurter, who holds the chair of Administrative Law at Harvard. In some one hundred carefully selected cases, this eminent authority presents for consideration: (1) the scope of commerce regulated by the Interstate Commerce Act, including the kind of carriers, kind of commerce and the distinction between "railroad" and "transportation" with regard to switching, free storage and diversion privilege, elevator service, refrigeration and similar related activities not directly under the designation of actual haul; (2) the duties of carriers under the Act, indicating service to be rendered, equality of service and maintenance of competition; (3) functions of the Interstate Commerce Commission in the enforcement of the Act as regards the constitutionality of such functions and the powers and duties of the Commission, as evidenced in various rulings by the Commission; and (4) functions of courts in the enforcement of the Act, setting forth under this head the primary jurisdiction of the Commission, judicial review and proceedings for enforcement. In an appendix are included opinions of the Supreme Court, rendered while this edition was going through the press, in the Wisconsin Passenger Fares Case, the New York Rate Case, the Eastern Texas Railroad Abandonment Case and the tariff construction case of Great Northern Railroad Company v. Merchants Elevator Company.

The direction of attention by the author to the importance of the subject of this work, affecting about three-fourths of the nation's transportation, not to mention other utilities, such as the telegraph, the express service and the pipe lines, all subject to the control of governmental regulation, is fitting and correct. The extension of the ramifications of the subject to the devloping activities of radio and aeronautics is a matter of time, so that familiarity with the subject by lawyers, administrators and judges is imperative. As a case-book for students of the Law, at school or in the practice, this work is to be recommended. It is unfortunate that the pagination of Chapter Four is not in continuity with the remainder of the work making reference somewhat difficult.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 35 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Automobiles**—Cause of Action.—Where a pedestrian was injured by falling over a towline between two automobiles at a street intersection, the fact that defendants were towing the automobile in a busy street did not of itself constitute negligence; the real question being whether ordinary care was used.—Richter v. Dahlman & Inbush, Wis., 190 N. W. 841.

2.——Crossings.—Ordinance specifying the manner in which a vehicle shall cross from one side of the street to the other held not applicable to an automobile backing out of a garage to the other side of the street.—Kramer v. Chicago & M. Electric Ry. Co., Wis., 190 N. W. 907.

3.——Fast—In an action for death of plaintiff's son, evidence that defendant's truck was going "fast," and "a great deal faster" than the ordinary rate of travel, held not to mean that the truck was going as fast as 10 miles an hour—Wilson v. Washington Flour Mill Co., Mo., 245 S. W. 205.

4.——Liability.—The liability of an individual defendant for running over bicycle rider with an automobile was properly submitted to the jury, though it was undisputed that his co-defendant was at the wheel when the injury occurred, where in testifying he freely used the term "we" in describing the driving, management and control of the car on the occasion of the trip in question.—Crescent Motor Co. v. Stone, Ala., 94 So. 78.

5.——Negligence.—The president and general manager of a corporation, without right, appropriating to his own use for his private business, an automobile furnished a salesman for use in the corporation's business was liable to the same extent for negligence in the operation of the automobile as if he owned the car.—Stegman v. Sturtevant & Haley Beef & Supply Co., Mass., 137 N. E. 363.

6.——Right of Way.—In action for damages to automobile sustained in collision with defendant's automobile, instruction that vehicles coming in certain directions "shall have the right of way over" vehicles traveling in other direction, held objectionable, in that it could be inferred therefrom that it was the absolute duty of the driver of defendant's car to yield the right of way.—Howard & Brown Realty Co. v. Berman, Mo., 245 S. W. 606.

7. **Bankruptcy**—Pledged Stocks.—Claimant, owner of certain shares of stock, delivered it to bankrupts, as brokers, to be sent to their New York correspondent and there held subject to his orders. He also gave bankrupts written authority to pledge or sell any stocks deposited by him to secure his account, if at any time the account should become impaired, so as, in their judgment, to be unsafe; but he had no account or other transactions with them. Bankrupts pledged claimant's stock with others to secure their own indebtedness to their New York correspondent, but the indebtedness was paid from sale of other stocks, leaving claimant's free and with no other claimant. Held, that the authority to pledge given was not unlimited and did not authorize the pledge made and that claimant was entitled to reclaim his stock.—In Re Mason & Owen, U. S. C. A. A., 284 Fed. 714.

8.——Preferred Payment.—Under Bankruptcy Act, § 67e (Comp. St. § 9651), to render a payment by a corporation voidable, because preferential, under the state law, the corporation must at the time have been insolvent, as insolvency is defined in the Bankruptcy Act.—In Re Elliott-O'Brien Co., U. S. C. C. A., 284 Fed. 507.

9.——Sale.—A contract by which the goods and fixtures in a store were transferred to bankrupt held one of absolute sale, and reservation of title therein held by way of security and invalid, under the laws of Michigan, for want of record.—Vander Lei v. Blakely, U. S. C. C. A., 284 Fed. 516.

10. **Banks and Banking**—Agency.—Notice of an alleged fraudulent act on the part of the cashier of a bank, done in his own interest and in which he does not represent the bank nor profess to do so, cannot be imputed to it, even though such transaction was collateral to, and contemporaneous with, another in which he did represent the bank and act for it.—First Nat. Bank v. Aler, W. Va., 114 S. E. 745.

11.——Fraud.—If certification of a check was procured by fraud of holder, and it remained his property and did not pass to an innocent holder, certification was not binding on the bank, and could rightfully be disregarded and payment refused.—National Bank of Baltimore v. Rockhold, Md., 119 Atl. 263.

12.——Liability of Indorser.—That officers of bank desiring note represented to indorser that maker was good, and he would be safe in indorsing, held not to relieve the indorser from liability.—Haymans v. Bennett, Ga., 114 S. E. 923.

13.——Owner of Draft.—When a bank credited the depositor's account with the amount of a draft which, with bill of lading attached, was taken by the bank for collection and permitted the drawing of checks against it before collection was made, but reserved the right to charge the amount back if collection was not made, the relation of debtor and creditor was not created, and the bank did not become the owner of the draft and bill of lading.—Midwest Nat. Bank & Trust Co. v. Parker Corn Co., Mo., 245 S. W. 217.

14.——Partnership Accounts.—A bank could not set off, against amount deposited to the individual credit of a partner, a note executed by the partnership to the bank, the partnership indebtedness being a joint obligation and not a joint and several obligation, notwithstanding Code 1907, § 2506, authorizing a creditor to sue one partner for the obligation of all, and section 2503, providing that when two or more persons are jointly bound by a promise in writing, the obligation is several as well as joint.—First Nat. Bank v. Capps, Ala., 94 So. 109.

15.——Saving Accounts.—Under Or. L. § 6220, providing that all of the assets of the savings department shall be held solely for the repayment of the savings depositors, and shall not be used to pay any other obligation or liability of the bank until after such depositors are paid, a commercial depositor cannot set off his deposit against his debt to the savings department, but a savings deposit may be offset by debt to the savings department or to the commercial department, and a commercial deposit may be offset by a debt to the commercial department.—Upham v. Bramwell, Ore., 210 Pac. 706.

16. **Bills and Notes**—Indorsement.—In action on certificate of deposit, payable to the order of a named person "on the return of this certificate properly indorsed," plaintiff was not required to aver and prove that before commencement of the suit the instrument was returned and indorsed by such person or his executor and presented to the bank, the failure to present the certificate properly indorsed to the bank being a matter of defense.—First Nat. Bank v. Capps, Ala., 94 So. 112.

17.——Indorsements.—By certification by bank of a trade acceptance, unless the bank had a right to cancel the certification and properly exercised it, the maker and indorsers of the trade acceptance were released from liability thereon, under Code, art. 13, § 207.—Baltimore Commercial Bank v. Shapiro, Md., 118 Atl. 858.

18.——Notice.—Nonreceipt of notice of protest by party to be charged does not affect his liability to holder when notices are forwarded in due course to his address.—Byron v. Byron, Heffernan & Co., N. J., 119 Atl. 12.

19. **Carriers**—Agency.—A station agent has authority generally to consent to any special arrangement in regard to the mode of delivery, and such agreement will be binding on the carrier.—American Fruit Grower v. King, S. C., 114 S. E. 861.

20. **Carriers of Goods**—Bill of Lading.—A bill of lading made out to a consignee "or assigns" is equivalent to one to the consignee or order, and is negotiable.—New York & P. R. S. S. Co. v. M'Gowan Lumber & E. Co., U. S. C. C. A., 284 Fed. 513

21.——Delivery.—Where baled cotton is placed on a compress platform, the customary place for loading and unloading, and nothing further remains to be done by the shipper to place it in position for loading into the cars, it constitutes a delivery to the carrier issuing bills of lading therefor.—Texarkana & F. S. Ry. Co. v. Brass, Tex., 245 S. W. 457.

22. **Carriers of Passengers**—Dominion over Right of Way.—Where a railroad company granted a right of way to a public service railway company to operate street cars across a plaza giving access to the railroad company's ferries, the public service company could not fence its right of way as a regulation of the plaza in the right of the railroad company, which, while having a right to reasonably regulate the plaza, could not exclude local carriers awaiting passengers from the ferry, it appearing that the fence would have such effect.—Public Service Ry. Co. v. Weehawken Tp., N. J., 119 Atl. 90.

23.——Jurisdiction.—The Hepburn Act, amending the Interstate Commerce Act, and prohibiting a common carrier subject to its provisions from issuing free passes, except to its employees and their families, takes charge, not only of the permission and use of such passes, but of the limitations and conditions on their use, so that the right to limit liability for a passenger traveling on such pass is to be determined by the federal laws, and not by the state statutes.—Kansas City Southern Ry. Co. v. Van Zant, Sup. Ct., 43 Sup. Ct. 176.

24.——Notice to Passengers.—Where plaintiff boarded defendant's interurban electric car erroneously, supposing that it would take her to her destination but was allowed to alight at the next station and proceeded to walk back to the station at which she boarded the car, spraining her ankle on the way, negligence of defendant could not be predicated on its failure to notify plaintiff of the car's destination before allowing her to enter it, notwithstanding that it is the universal custom of steam railroads to give such notice to passengers.—Hundley v. Louisville & I. R. Co., Ky., 245 S. W. 149.

25.——Parties.—Where an automobile livery company and a cab company are made up of the same stockholders and officers, and occupy the same offices, with joint office employes and use a common telephone, held that, where a telephone call for a cab was received from an unknown party, who did not ask which company he was talking to, but merely ordered a cab, which was furnished by the cab company, the auto livery company could not be held liable for injuries resulting from the negligence of the cab driver, though if such automobile livery company, not engaged in the cab business, had itself undertaken to provide a taxicab, it was its duty to provide a safe taxicab and safe driver.—Bergenthal v. State Garage & Trucking Co., Wis., 190 N. W. 901.

26. **Commerce** — Interstate. — An engine being prepared to take out a train of cars some of which were loaded with interstate freight was devoted to interstate commerce, and one engaged in the work of preparing it was engaged in interstate commerce, and had a cause of action for injury under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665).—Brimer v. Davis, Mo., 245 S. W. 404.

27.——Interstate.—A switchman injured while helping to break up a cut of cars, containing both interstate and intrastate cars, held to have been "employed in interstate commerce," within Employers' Liability Act, April 22, 1908, § 1 (Comp. St. § 8657), though the particular car he was riding when injured was in intrastate use.—Davis v. Dowling, U. S. C. C. A., 284 Fed. 670.

28.——Intrastate.—Where a corporation establishes a branch office in a state to sell its products or purchase products for its use, it is doing business within the state which does not relate to interstate commerce, and it is subject to the laws of the state imposing conditions on the right of foreign corporations to do business therein.—State v. Pioneer Creamery Co., Mo., 245 S. W. 361.

29.——Taxation.—The taxation by a state of the property belonging to an interstate railroad within its borders was not a taxation of interstate commerce, where there was no showing that any property without the state was taxed.—Southern Ry. Co. v. Watts, Sup. Ct., 43 Sup. Ct. 192.

30. **Constitutional Law**—Assignment of Wages. —Acts 1903, c. 21, as amended by Acts 1903, c. 453, carried into Shannon's Code, § 4341a1, providing that no action shall be brought to charge any employer upon any assignment by any clerk, servant, or employee of wages or salaries unearned at the time of the assignment unless the assignment is assented to in writing by the employer, does not violate Const. art. 1, § 8, providing for due process of law.—West v. Jefferson Woolen Mills, Tenn., 245 S. W. 542.

31.——Criticism.—A criticism, made in good faith, of the alleged practice of a judge in presiding over cases in which his sons were counsel, without imputing to him conscious and intentional bias and improper judgments in specific cases, is within the right of free speech guaranteed by Const. 1902, § 12.—Boorde v. Commonwealth, Va., 114 S. E. 731.

32.——Estoppel.—A decision that a property owner was estopped by connecting his property with a sewer to attack the tax bill issued against his property for the construction of the sewer on the ground that it violated the Fourteenth Amendment to the United States Constitution is not the enforcement of a law as of validity by estoppel to particular persons, though it is invalid under the Constitution to all of the world besides.—St. Louis Malleable Casting Co. v. George C. Prendergast Construction Co.—Sup. Ct., 43 Sup. Ct. 178.

33. **Contracts**—Unilateral.—Contracts for sale of sugar by bankrupt to claimants for future delivery fixed a minimum price at which claimants were bound to accept the sugar and a maximum price, which was not to be exceeded. If the price fixed by bankrupt at time for delivery exceeded the minimum, acceptance by claimants was optional. Each claimant made an advance payment to be returned if delivery was not made in accordance with the contract. Delivery was tendered at the minimum price and refused by claimants. Held, that the contracts were enforceable against bankrupt at the maximum price and that claimants could not recover the advances on the ground that they were void as unilateral.—Wood County Grocer Co. v. Frazer, U. S. C. C. A., 284 Fed. 691.

34. **Corporations**—Liability.—If one corporation is wholly under control of another, the fact that it is a separate entity does not relieve the latter from liability for its acts.—Fourth Nat. Bank v. Portsmouth Cotton Oil Refin. Corp., U. S. C. C. A., 284 Fed. 719.

35.——Service of Process.—The fact that an officer of a foreign corporation not authorized to do business within the state was in the state to purchase goods for resale by the corporation at its place of business in its home state does not establish that the corporation was present within the state, so as to enable the court to obtain jurisdiction over it by service of process on its president.—Rosenberg Bros. Co. v. Curtis Brown Co., Sup. Ct., 43 Sup. Ct. 170.

36. **Druggists**—Poison.—If the contents of a box sold by a druggist was a substance usually denominated a poison, the druggist's failure to label the box "Poison," as required by Rev. St. 1919, § 3625, constituted negligence per se, and rendered the druggist liable to the purchaser for injuries resulting therefrom.—Hendry v. Judge & Dolph Drug Co., Mo., 245 S. W. 358.

37.——Poison.—In action for injuries from taking internally part of a can of preparation sold by defendant druggist as Rochelle salts, which can was labeled "Roachsault," but not labeled "Poison," as required in the sale of poisons, by Rev. St. 1919, § 3625, held that failure of plaintiff to read or examine the label did not constitute negligence as a matter of law.—Hendry v. Judge & Dolph Drug Co., Mo., 245 S. W. 358.

38. **Electricity**—Liability of Property Owner.—Though a sidewalk extended some distance on adjoining property, if there was no indication of the street line and the public were accustomed to use the entire walk, and a pedestrian who, while passing on the walk outside the street line, touched an electric conductor maintained near a garage door and was killed by an electric shock therefrom, the owner of the garage may be held liable, though decedent was technically a trespasser.—Ruocco v. United Advertising Corporation. —Conn., 119 Atl. 48.

39. **Highways**—Liability.—Special road districts are public corporations and quasi political subdivisions of the county and state, and are not liable for negligence in the building and construction of public works, such as roads and bridges, in the absence of legislation making them so liable.—Sharp v. Kurth, Mo., 245 S. W. 636.

40.——Public Walk.—Proof that during the winters since defendant's block was built, which was before the establishment of a highway by prescription, the water from its eaves which overhung the sidewalk frequently dripped on the walk, interfering with its use by the public, is inconsistent with the acquisition of a public walk by prescription.—Woodsville Fire Dist. v. Stahl., N. H., 119 Atl. 123.

41. **Insurance**—Application.—An incorrect answer to a question, in an application for an accident insurance policy, as to whether applicant was in sound condition mentally and physically, held insufficient to annul the contract, in the absence of intentional and false misrepresentation of the facts; the question requiring a conclusion by the applicant.—Fehrer v. Midland Casualty Co., Wis., 190 N. W. 910.

42.——Authority of Agent.—Collecting agent, if authorized to accept past-due premiums because of continuation of liability of insurer for death, under death and accident disability policy, had authority to receive past-due premiums for all purposes.—Life & Casualty Ins. Co. v. Eubanks, Ala., 94 So. 198.

43.——Burglary.—Where a policy of burglary insurance provides indemnity to the insured "for all loss of money * * * occasioned by the felonious abstraction of the same from within the safe or safes described in the schedule * * * after entry into such safe or safes has been effected by force and violence by the use of tools, explosives, electricity, or chemicals directly thereupon, of which force and violence there shall be visible marks, * * * and for all loss by damages (except by fire) to the said money, * * * caused directly by such entry into the safe, or attempt thereat," and provides that the insurer "shall not be liable for loss of or damage to * * * such property contained in a fireproof safe or vault, unless entry into such safe or vault has been effected by the use of tools, explosives, electricity or chemicals directly upon the exterior thereof," and further provides that the insurer shall not be liable for such loss "unless the doors of all vaults, safes and chests covered hereby are equipped with combination or time lock and properly closed and locked at the time of the burglary or attempt thereat," held, that a felonious entry into the safe effected by "tools, explosives, electricity, or chemicals directly upon" any part of the safe exterior to the cavity holding the contents of the safe, providing all doors were equipped with the kind of locks provided for in the policy, and at the time of the felonious entry into the safe were properly closed and locked, is such a felonious entry as is insured against by the policy.—Columbia Casualty Co. v. L. W. Rogers Co., Ga., 114 S. E. 718.

44.—Knowledge by Agent.—A policy will not be held void nor a warranty as to the truth of insured's answers to questions in the application held breached for facts known to the soliciting agent before the application was signed, where insured fully and truthfully related the facts to the agent, who wrote in the false answers, though the latter were material and pertinent to the risk. —Eaton v. National Casualty Co., Wash., 210 Pac. 779.

45.——Knowledge of Insurer.—The knowledge which an agent receives for which the principal is to be charged must be such as is received while acting for the principal, not for another whose interests may be adverse, and an agent who had promised to pay the first premium for insured was not acting for the insurer when later making such payment, and such agent's knowledge at such time of insured's illness was not the knowledge of the insurer.—Drilling v. New York Life Ins. Co., N. Y., 137 N. E. 314.

46.——Liability of Company.—The failure of a fire insurance company doing business in this state to register, or to pay the license required by law of insurance companies doing business in this state, does not relieve such a company from liability to its policy holders upon policies thus issued in violation of law.—Hart v. Lee, Ga., 114 S. E. 644.

47.——Premiums—Where policy had previously lapsed for non-payment of premiums for four successive weeks, and thereafter premiums had been collected on it, held that the clause requiring revival of lapsed policy to be evidenced by indorsement on the face of the policy was waived, and acceptance of full premiums thereafter, following a lapse of payment, with knowledge that insured had suffered an accident, could not be construed merely as accepting premiums due for continuing death liability, where the premiums were severable; 20 per cent thereof being for death benefit and 80 per cent for the sick and accident benefit.—Life & Casualty Ins. Co. v. Eubanks, Ala., 94 So. 198.

48.——Vexatious Delay.—Where neither the Supreme Court nor any of the Courts of Appeals had held that, under policy not effective until delivery, days of grace ran from the date of delivery, and not from the due date, though it had been held that the premium paid the insurance for one year from the date of delivery, the refusal to pay on ground that days of grace had expired without payment did not constitute a vexatious delay justifying damages and attorney's fees.—Landrigan v. Missouri State Life Ins. Co., Mo., 245 S. W. 382.

49. **Intoxicating Liquors** — Possession.—Under Rev. St. 1919, § 6588, as amended by Acts 1921, p. 414, making it unlawful to possess or transport intoxicating liquor, and providing that the act shall not be construed so as to prohibit the possession of intoxicating liquor in the private residence of the owner thereof, when such intoxicating liquor has been lawfully acquired and is being lawfully used, the possession or the transportation of intoxicating liquor acquired from one who had no authority to sell it is unlawful, though not possessed or transported for the purpose of sale or delivery to some other person.—State v. Bush, Mo., 245 S. W. 587.

50. **Libel and Slander Privilege.**—Where, under a contract between the railway brotherhood, of which plaintiff was a member, and a railroad company employing plaintiff, plaintiff was called into conference with the road superintendent to investigate the reason for the discharge of a member of plaintiff's section crew, a statement by the superintendent to plaintiff in the hearing of representatives of the brotherhood that, unless plaintiff reimbursed the company for time out of which he had defrauded it, he was liable to criminal prosecution, held uttered under a qualified privilege.—Polk v. Missouri Pac. R. Co., Ark., 245 S. W. 186.

51. **Master and Servant**—Independent of Relation.—Where an automobile truck driver, who had departed from his master's business to transport a crowd of boys around in a street carnival, at the time of the accident to plaintiff, had determined to return to the garage, and was starting the truck for that purpose, though it was still crowded by the boys engaged in the frolic, the bare purpose of the driver, just beginning to be carried into effect, was insufficient to establish the resumption of the relation of servant.—Fiocco v. Carver, N. Y., 137 N. E. 309.

52.——Liability.—Neither the Boiler Inspection Act (U. S. Comp. St. §§ 8630-8639), the Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), nor the orders of the Interstate Commerce Commission absolutely limit the carrier's liability to a violation of them alone, and as to one injured while repairing a defective boiler on a locomotive negligence may be predicated on other conditions, and if the conditions constitute negligence he may recover.—Grundman v. Davis, Wis., 190 N. W. 839.

53.——Res Ipsa Loquitur.—A petition alleging that plaintiff's duties required him to go inside the fire box of an engine to assist in repair, that the employer had installed an electric light in the fire box to enable the plaintiff and others to see, and that while plaintiff was engaged in his work the electric light bulb exploded and burst into fragments, some parts of which were driven into plaintiff's eye, etc. held not to charge employer with negligence under the doctrine of res ipsa loquitur, in absence of allegations that employer manufactured and supplied its own electric light bulbs and the electricity to produce the light, or that an explosion would not have occurred without some negligence in the use of the bulb and electricity, or in the faulty construction of the bulb, since the court cannot take judicial notice as a matter of common knowledge that an electric light bulb will not explode except as the result of some negligence. —Russell v. St. Louis & S. F. Ry. Co., Mo., 245 S. W., 590.

54. **Mechanic's Lien**—Time of Filing.—The cement work on the walks and driveways had been completed so late in the fall of 1919 that the cement became frozen. The person who had the contract for that particular work refused to make repairs, and early in the spring of 1920 an arrangement was made between the owner and the plaintiff by which the latter agreed to purchase the material and have the work of the walks and driveways repaired for a stated consideration which was paid to him. He performed some services in the matter by the purchase of material but failed to have the work done. He filed his lien statement August 12, 1920. Held, none of the services rendered by plaintiff under this arrangement in regard to the repair work was contemplated in the original contract, and could not have the effect of extending the time in which to file a lien under the original contract. Baxter v. Cherryvale Oil Co., 111 Kan. 621, 208 Pac. 568.—Sonner v. Mollohan, Kan., 210 Pac. 649.

55. **Monopolies**—Publishers.—Contracts between a publisher and a large number of distributors, some of whom had been wholesale dealers in magazines and others not, whereby the distributors agreed to requisition from the publisher the number of magazines required for their territory, title to remain in the publisher until sold, and to train and supervise boys who were to sell the magazines, are contracts of agency and not of sale on condition, so that they do not violate Clayton Act, § 3 (Comp. St. § 8835c), prohibiting lease or sale contracts which prohibit the lessee or buyer from handling the product of competitors, even though the contracts contained clauses prohibiting the distributors from handling other magazines, unless with the consent of the publisher.—Federal Trade Commission v. Curtis Pub. Co., Sup. Ct., 43 Sup. Ct. 210.

56. **Municipal Corporations**—Governmental Function.—Negligence of city employes at free public bathing beach, in placing box used as a locker in the open space in the rear of the bath-house, frequented by children for playing purposes, causing death of small child who climbed on top of box and fell therefrom, held not actionable, the negligent act having been performed by employes in the performance of a governmental function.—Gensch v. City of Milwaukee., Wis. 190 N. W. 843.

57. **Principal and Agent**—Accounting.—An agent through which a coke company's output was sold held bound to account to its principal for freight rebates received by it from a buyer by reason of a change in the point of loading consequent on assignment of the latter's order to such principal, though retained in good faith, where not disclosed to, or approved by, the principal.—Allegheny By-Product Coke Co. v. J. H. Hillman & Sons Co., Pa., 118 Atl. 900.

58. **Railroads**—Dedicated Streets.—Under Rev. St. Neb. 1913, § 5141, providing that no street dedicated by the owner to public use in a city or village shall be deemed a public street, or be under control of the city council or board of trustees, "unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose," a village ordinance requiring flagmen or automatic signals at railroad crossings of streets held applicable only to streets which have been duly accepted by ordinance.—Stewart v. Chicago, B. & Q. R. Co., U. S. C. C. A., 284 Fed. 716.

59.——Trespasser.—Where a boy was killed by the starting of a freight train while crawling under the bumper between cars a few feet from a crossing blocked by a freight train, the railroad company could not defend an action for his death on the ground that he was a trespasser.—Baltimore & O. R. Co. v. State, Md., 119 Atl. 244.

60. **Sales**—Conditional.—One buying an automobile truck, against which there was no incumbrance recorded in the county wherein the sale was made, from a dealer who had possession and an apparent right to sell, without notice of an outstanding bill of sale filed, in conformity with Uniform Conditional Sales Act, § 6, in the county in which the truck was to be kept by such buyer, held an innocent purchaser for value without notice.—Halliwell v. Trans-States Finance Corporation, N. J., 118 Atl. 837.

61.——Delivery.—A contract for the sale of 20 pieces of lining, delivery to be made August, September, October, cannot be construed as requiring delivery of part of the goods in each of the months specified, but permits the seller to make delivery at any time during the three months.—C. Bahnsen & Co. v. Leaf, N. Y., 197 N. Y. S. 160.

62.——Warranty. — Manufacturers' warranty, stamped on the engine of motor truck, that with proper handling it would draw a 5-ton load on the level at the rate of 10 miles an hour, held not to inure to the benefit of a purchaser from an intermediate dealer.—Lee v. Pauly Motor Truck Co., Wis., 190 N. W., 819.

63. **Specific Performance**—Contract.—A decree in equity, dismissing a petition for the specific performance of a contract, which provided, "This decree shall not in any way be operative or used as a bar to any suit at law that in the future may be brought by the complainant," held valid under the authority of such court to dismiss a petition for specific performance without prejudice to the petitioner's right to sue at law on the contract.—Knickerbocker Hotel & Realty Co. v. Clabby, N. J., 118 Atl. 833.

64. **Street Railroads**—Instructions.—In an action for injuries received in a collision between plaintiff's wagon and defendant's street car, an instruction authorizing a verdict for plaintiff on a finding that defendant's motorman "failed to stop the street car in the shortest time and space possible," held not erroneous, the vigilant watch ordinance not requiring, as a condition to recovery, a finding that the motorman did not, "by the exercise of ordinary care," stop the car with safety, etc.—Dickens v. Wells, Mo., 245 S. W. 563.

65. **Warehousemen**—Safety Deposit Boxes.—Evidence that bank cashier failed to lock the outside door to safety deposit boxes rented for hire, that burglars opened the inner door, and stole the contents, held to show liability on the part of the bank.—Harland v. Pe Ell State Bank, Wash., 210 Pac. 681.

66. **Wills** — Construed. — Instrument, whereby maker certified "that I * * * invest my husband with full power of attorney * * * for the purpose of acting for me in all business matters. * * * This also constitutes my last will," held not to constitute a will; there being no disposition of property.—In re Seymour's Will, N. C., 114 S. E. 626.

67.——Trust Estate.—Where the terms of a will create a trust estate to be administered in behalf of a beneficiary during her lifetime, and that it should devolve on her heirs at her death, the term "heirs" is to be construed by the law of the domicile, and one who merely claims an interest by virtue of a quitclaim deed from the husband of the dead beneficiary, in a state where the husband is not the heir of the wife, has no title to any portion of the trust estate.—Gibson v. Boynton, Kan., 210 Pac. 648.

68.——Validity.—The size, texture and quality of paper used in preparing a will is no evidence of the lack of testator's sincerity in its execution, and does not affect its validity.—In re Brackenridge's Estate, Tex., 245 S. W. 786.

69.——Vested Remainder.—Under a will bequeathing the residue of testator's personal estate to his wife for her life or while she remained his widow, and, "after her death or marriage, to such person or persons as would by law inherit the same," the remainder vested in testator's children, as his next of kin, immediately on his death, in the absence of any language indicating that it should not vest until after the widow's remarriage or death; the persons who "would by law inherit" being those who would take the estate under the statute of descents or the statute of distributions if testator had died intestate.—In re Buzby's Estate, N. J., 118 Atl. 835.